

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

F I L E
JAN - 9 2006
CLERK'S OFFICE
DETROIT

FRANKLIN D. CLAYTON,

Petitioner,

v.

CASE NO. 05-CV-71943-DT
HONORABLE ARTHUR J. TARNOV

KENNETH MCKEE,

Respondent.


ORDER DENYING A CERTIFICATE OF APPEALABILITY
AND DENYING LEAVE TO APPEAL IN FORMA PAUPERIS

Petitioner Franklin D. Clayton has appealed the Court's order denying his motions for emergency substantive relief, for release from custody and from administrative segregation, for appointment of counsel, and for a copy of his habeas petition. The order also directed Petitioner to file a short, plain, and legible list of his habeas claims and to submit future documents double-spaced and typewritten or legibly handwritten.

The Court must treat Petitioner's notice of appeal as an application for a certificate of appealability. *Slack v. McDaniel*, 529 U.S. 473, 483 (2000). In a habeas corpus proceeding, only "the *final order* shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held." 28 U.S.C. § 2253(a) (emphasis added). Because the order being appealed is not the final order in this case, it is not appealable. *See id*; *see also* Fed. R. App. P. 22(a) (stating that "[t]he applicant may,

Clayton v. McKee, No. 05-71943

under 28 U.S.C. § 2253, appeal to the court of appeals from the district court's *order denying the application*" for a writ of habeas corpus) (emphasis added). The Court therefore declines to issue a certificate of appealability. The Court also declines to grant leave to appeal *in forma pauperis*.


ARTHUR J. TARNOW
UNITED STATES DISTRICT JUDGE

Date: JAN 09 2006